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Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 EA-09 ISO-00 PM-05 ERDA-07 NRC-07
ACDA-10 DODE-00 IO-14 CIAE-00 INR-07 NSAE-00
NSC-05 EB-08 OES-07 FEAE-00 SS-15 SP-02 /112 R

DRAFTED BY L/OES:CDSIEGAL
APPROVED BY L/OES:TLLEITZELL
PM/NPP - MR. MCGUINNESS (SUBS)
ERDA/DSS - MR. RICH
NRC/NMSS:MR GIARRATANA
IO/SCT - MS. JILLSON
ERDA/GC - MS. IZELL
ACDA/GC - MS. MAZEAU
NRC/IP - MR. PETERSON (SUBS)
ACDA - MR. VAN DOREN
D ISA - COL. WEEKLY
----------084006 261807Z /40
R 261621Z JUL 77
FM SECSTATE WASHDC
TO AMEMBASSY VIENNA
INFO AMEMBASSY TOKYO

UNCLAS STATE 174402

E.O. 11652: N/A

TAGS: ENRG, TECH, IAEA, JA

SUBJECT:DRAFT CONVENTION ON PHYSICAL PROTECTION : JAPANESE COMMENTS

REF: VIENNA 6226

1. REFTEL POSES SEVERAL QUESTIONS ABOUT DRAFT CONVENTION. THIS RESPONSE KEYED TO POINTS OF PARA 2 REFTEL.

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A) WE NOTE THAT WHILE MATERIAL IS WITHIN THE TERRITORY, JURISDICTION OR UNDER THE CONTROL OF A PARTY, ARTICLE III APPLIES. THIS ARTICLE REQUIRES STATES PARTIES TO TAKE MEASURES TO PROTECT MATERIAL. TO EXTENT THESE MEASURES ARE MORE STRICT THAN THOSE OF ARTICLE IV, COMPLIANCE WITH ARTICLE III SHOULD AUTOMATICALLY TAKE CARE OF ARTICLE IV. HOWEVER, INTENT WOULD BE THAT ARTICLES III AND IV APPLICABLE WITHIN

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JURISDICTION OF PARTIES AND TO THE EXTENT CONFLICT ARISES, MORE STRINGENT CONTROLS WOULD APPLY. ARTICLE IV BASED ON RECOGNITION THAT TRANSPORTATION IS VERY VULNERABLE PHASE OF NUCLEAR ACTIVITY AND OUR INTENT WOULD BE TO INTERPRET IT AS BROADLY AS POSSIBLE. INTENT OF LANGAUGE THAT MATERIAL

BE COVERED "AT ALL TIMES" DURING TRANSFER WOULD BE DEFEATKD IF TRANSFER WERE RESTRICTIVELY DEFINED. THUS, WE WOULD DE-FINE AN INTERNATIONAL SHIPMENT AS BEGINNING AND ENDING AT NUCLEAR FACILITIES. IT MIGHT BE ARGUED THAT TRANSPORTATION WITHIN A COUNTRY, E.G. AFTER SHIPMENT HAS BEEN UNLOADED FROM A SHIP TO TRUCKS, IS A DOMESTIC MATTER. HOWEVER, IT WOULD NOT HELP MUCH TO LEAVE A VERY WEAK LINK IN THE TRANS-PORATION CHAIN. THEREFORE, WE THINK FACILITY TO FACILITY INTERPRETATION APPROPRIATE. (IF NECESSARY, UE ARE AMENABLE EXPRESSLY TO DEFINING TERMINAL POINTS OF INTERNATIONAL TRANSFER IN CONVENTION.)

B) "HOLDING AND STORAGE INCIDENT TO INTERNATIONAL TRANSFER" MEANS ANY PERIODS AFTER MATERIAL LEAVES A FACILITY, AND BEFORE IT ARRIVES AT ITS ULTIMATE DESTINATION, WHEN THE SHIPMENT IS NOT PHYSICALLY BEING "TRANSPORTED." FOR EXAMPLE IF THE MATERIAL GOES BY TRUCK FROM THE FACILITY TO AN AIR-PORT, WHILE IT SITS IN THE LOADING OR STORAGE AREA IT WOULD BE COVERED. PERHAPS MORE IMPORTANTLY, IF EN ROUTE THE MATERIAL IS TRANSFERRED FROM ONE CARRIER TO ANOTHER UNCLASSIFIED

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OUTSIDE THE SHIPPING AND RECEIVING STATES AND MUST BE STORED, THIS WOULD BE COVERED. WE NOTE THAT HIGHEST PIL-FERAGE RATES TEND TO OCCUR IN STORAGE AREAS AND SIMILAR FACILITES.

C) WE HAVE NO OBJECTION TO ATTEMPTS TO TIGHTEN LANGAUGE - IDEALLY ALONG INFCIRC/225 LINES. SUPPLIERS' GUIDELINES LANGAUGE WAS USED BECAUSE SOME SUPPLIERS OBJECTED TO STRONGER FORMULATION IN OUR FIRST DRAFT, SO WE ARE NOT OP-TIMISTIC THAT MORE PRECISION WOU;LD BE ACCEPTABLE TO THOSE STATES.

D) IMPLEMENTATION OF "POINT OF CONTACT" APPROACH IN CASE OF NON-MILITARY NUCLEAR EMERGENCY IS STILL UNDER STMDY. IT MAY TURN OUT THAT THOSE POINTS OF CONTACT ARE THE SAME AS THE ONES REFERRED TO IN ARTICLE V ,ARA 1 "TO COOPERATE ON MATTERS RELATED TO THE INTERNATIONAL TRANSFER OF NUCLEAR MATERIALS AND ON OTHER MATTERS OF MUTUAL CONCERN." THIS ESPECIALLY TRUE IF AGENCY IN CHARGE OF NUCLEAR ACTIVITIES WITHIN A COUNTRY IS RELATIVELY SMALL. BUT BECUASE FUNC-TIONS OF TWO TYPES OF "CONTACTS" MAY BE RATHER DIFFERENT, WE DO NOT SEE IT AS INEVITABLE THAT THE CONTACTS

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WILL BE THE SAME.

E) WE HAD NOT INTENDED THAT PARTIES ESTABLISH UNIFORM CRIMINAL SANCTIONS. CRIMINAL PENALTIES ARE VERY MUCH MATTERS OF NATIONAL SOVEREIGNTY. ON THE OTHER HAND, WE THINK JAPANESE, AND OTHER NATIONS WITH LIKE PENALTY STRUCTURES, WOULD RECOGNIZE AND TAKE ACCOUNT OF DIFFERENCES BETWEEN THEFT OF NUCLEAR MATERIAL AND THEFT OF ORDINARY MATERIAL, EVEN MATERIAL OF A SIMILAR COST. TO EXTENT THAT CRIMINAL SANCTION IS DESIGNED TO DETER CRIME, PENALTIES CAN AND

SHOULD REFLECTHAZERDOUS NATURE OF MATERIAL STOLEN. THUS HIGHER PENALTIES FOR NUCLEAR OFFENSES ARE EXPECTED.

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F) YES.

G) THIS IS A FAIRLY STANDARD ARTICLE AND JAPANESE MIGHT DESIRE TO CONSULT NEGOTIATING HISTORY OF OTHER AGREEMENTS THAT CONTAIN IT: HAGUE ITMVENTION ON HIJACKINL, MONTREAL CONVENTION ON SABOTAGE, CONVENTION ON PROTECTION OF DIPLOMATS. THE "CIRCUMSTANCES" ENVISIONED ARE THOSE THAT GIVE REASONABLE FACTUAL BASIS FOR BELIEVING THAT AN "OFFENSE" HAS BEEN COMMITTED. IN CASE WHERE "INTERNATIONAL OFFENSE" IS ALLEGED, CIRCUMSTANCES SHOULD, IN ADDITION, INCLUDE FACTS THAT SUPPORT ALLEGATIOM THAT MATERIAL OR TRANSPORT WAS IN INTERNATIONAL TRANSFER. CLEARLY, CIRCUMSTANCES SHOULD NOT BE DEFINED SO BROADLY AS TO PERMIT EXTRADITION AT POLITICAL WHIM OF STATE REQUESTING EXTRADITION. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, GOVERNMENT REACTIONS, NUCLEAR SAFEGUARDS
Control Number: n/a
Copy: SINGLE
Sent Date: 26-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: CDSIEGAL
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Executive Order: N/A
Errors: N/A
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Line Count: 150
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Litigation History:
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Message ID: 5f1e8663-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: UNCLASSIFIED
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Reference: 77 VIENNA 6226
Retention: 0
Review Action: RELEASED, APPROVED
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